

EDWARD W. KIRK, BEATRICE ANNE KIRK
RALPH HEVENER, RAMONA F. HEVENER

IBLA 75-254, 75-284

Decided May 5, 1975

Appeals from decisions of the California State Office, Bureau of Land Management, (1) rejecting application (R-933) to purchase one tract of land pursuant to the Mining Claims Occupancy Act and offering instead a lifetime lease, and (2) determining, as to a second tract, that a lease (CA-2582) under the Small Tract Act be offered for a period of five years, renewable at the option of the Bureau.

Affirmed.

1. Mining Occupancy Act: Generally

The determination of the extent of the relief that will be granted to a qualified applicant under the Mining Claims Occupancy Act of October 23, 1962, is committed to the discretion of the Secretary of the Interior, and where the determination to award an applicant a lifetime lease instead of a fee interest rests upon a rational basis, it will not be disturbed.

2. Small Tract Act: Generally

It is not an abuse of the Secretary's discretion under the Small Tract Act to offer a renewable five-year lease instead of fee title where it appears that the latter form of tenure would interfere with proper resource development and management programs.

APPEARANCES: M. William Tilden, Esq., Lonergan, Jordan, Gresham & Varner, San Bernardino, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Edward W. Kirk and Beatrice Anne Kirk have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated November 5, 1974, reaffirming its earlier decision of March 27, 1974, which rejected their application to purchase fee title to a tract of land pursuant to the Mining Claims Occupancy Act, as amended, 30 U.S.C. §§ 701-709 (1970), and offered instead a lifetime lease for the land sought. Ralph Hevener and Ramona F. Hevener have appealed from a decision of the same State Office, dated November 1, 1974, offering them a lease for an adjacent tract under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1970), for a period of five years, renewable at the option of the Bureau. Appellants have asked that their appeals be consolidated as their requests for relief are interrelated.

The Kirks located the Sara Bill #1 mining claim within the SW 1/4 sec. 25, T. 23 S., R. 42 E., M.D.M., Inyo County, California, on November 14, 1949. The Kirks placed numerous improvements on the claim, and from the date of location to the present they have occupied the claim as their permanent residence. The Heveners moved on to the Sara Bill #1 claim in 1952 after constructing a residence, and have maintained their permanent residence on the claim since that date. In an affidavit, the Kirks state that Mr. Hevener is their "partner," and in the statement of reasons on appeal, filed on behalf of all appellants, counsel states that, "It was understood between Mr. and Mrs. Kirk and Mr. and Mrs. Hevener that upon acquisition of the fee interest, the property would be divided between them."

On October 2, 1967, the Kirks filed a relinquishment of the mining claim and also filed an application to purchase fee title to the residential portion of the claim pursuant to the Mining Claims Occupancy Act. By decision dated October 18, 1967, the BLM accepted the relinquishment.

In a land report and environmental analysis developed in response to the Kirks' application, the BLM determined that the Kirks were qualified applicants under the Act. The BLM noted that the subject land has been classified for multiple use management and is part of the California Desert Study Area. Open space and recreation are recognized as the primary values in this area. The BLM reports concluded with recommendations that the Kirks be offered a lifetime lease instead of a fee interest as passage of title would interfere with long-range resource development and management plans for the national resource lands.

By letter decision dated March 27, 1974, the BLM informed the Kirks that, based on the findings in the BLM reports, it was determined that the public interest would not be served by granting a fee title for the applied for land. The Kirks were offered a lifetime lease instead. Thereafter, the Kirks asked for and were granted an extension of time in order to present additional evidence to supplement their application with respect to their request for fee title. In their supplemented application, the Kirks generally reasserted their qualifications for a grant of fee title under the Mining Claims Occupancy Act and also requested that if fee title could not be granted under the Mining Claims Occupancy Act, it be granted under the provisions of the BLM Manual, section 2233 -- Small Tracts -- which provided for procedures for handling occupancies occurring prior to October 23, 1962, which could not be considered under the Mining Claims Occupancy Act. In its decision dated November 5, 1974, the BLM informed the Kirks that the subject land was "an essential part of a tract identified as having a value for a governmental program where, under multiple use considerations, occupancy is inconsistent with other uses, or where there is a future foreseeable need for the land (BLM Manual 2233.15A (3)(b), Land Category 2)." Accordingly, the BLM concluded that it would be improper to classify the land as available for sale even if BLM Manual criteria were to be applied. The decision concluded by stating that no new issues or facts were submitted in the supplemented application which justified a change in the offer of a lifetime lease, and the earlier decision was, therefore, reaffirmed.

In the process of developing the Kirks' land and environmental analysis reports, the BLM land examiners discovered the Heveners, occupancy and recommended that the Heveners' situation be resolved under BLM trespass abatement procedures. A land report and environmental analysis, identical in content to those developed for the Kirks, was processed with respect to the Heveners' occupancy. The reports determined that the Heveners had been in trespass on national resource lands. Balancing the Heveners' long-standing residency on the land against the fact that the land had been identified as having value for a governmental program where permanent occupancy was inconsistent with other public uses, the BLM land examiners recommended that the Heveners be granted a lease under the Small Tract Act. Accordingly, in its decision dated November 1, 1974, the BLM offered the Heveners a lease under the Small Tract Act for a period of five years, renewable at the option of the BLM.

In the statement of reasons on appeal, counsel for appellants contends that the State Office failed to properly address itself to the Kirks' request for alternate consideration pursuant

to the criteria set forth in section 2233 of the BLM Manual, and also requests that the Heveners be granted fee title pursuant to the BLM Manual's provisions. Appellants generally assert their belief that permanent occupancy would not be inconsistent with BLM plans for the area and add that they are "at an age when they are looking forward to the security which can only come from owning their place of residence and being assured that when they die either it or the value of it can be passed on to their heirs."

Appellants' arguments regarding application of BLM Manual criteria are similar to those presented in John Paul Hinds, 18 IBLA 385 (1975). In Hinds, supra at 387, the Board noted that section 2233 of the BLM Manual set forth instructions for providing relief to persons who did not qualify under the Mining Claims Occupancy Act. Section 2233 has recently been superseded by section 9232 -- Occupancy and Enclosures (Trespass) -- which provides administrative procedures to be applied to unlawful enclosures and occupancy trespass occurring on national resource lands, including those which occur on unpatented mining claims. 1/ At this juncture we noted two points. We reiterate the principle stated in Hinds, supra at 388, that, "The BLM Manual is utilized internally for the instruction of Bureau personnel, and as an aid in the and interpretation and application of relevant statutes and administrative regulations. It does not have the force and effect of statutes or regulations. Barbara Rubenstein, A-28508 (Dec. 28, 1960)." See also Clark County School District, 18 IBLA 289, 306, 82 I.D. ____ (1975). We note also that the former and present BLM Manual criteria only apply to parties who occupied or enclosed national resource lands illegally having no claim or color of title made or acquired in good faith, or who did not qualify for relief under the Mining Claims Occupancy Act. The Kirks' situation is not encompassed within these categories as they made a proper entry on their land pursuant to the location of the Sara Bill #1 mining claim and have been found to be qualified applicants under the Mining Claims Occupancy Act. 2/

1/ See, e.g., the Unlawful Occupancy or Enclosures Act of February 25, 1885, 23 Stat. 321, 43 U.S.C. § 1061 (1970); Multiple Surface Use Act of July 23, 1955, 69 Stat. 368, 30 U.S.C. § 612a (1970); Mining Claims Rights Restoration Act of August 11, 1955, 69 Stat. 683, 30 U.S.C. § 625 (1970); 43 CFR 9239.2.

2/ In any case, we point out that the State Office, in its decision of November 5, 1974, determined that when measured against the criteria set forth in the BLM Manual, the applied for land would not be eligible for purchase classification.

[1] We now turn to the issue of the Kirks' request for a grant of fee title under the Mining Claims Occupancy Act. The facts in this case are strikingly similar to those presented in Harry E. Hawkenson, 13 IBLA 237 (1973), and Arland E. Purington, 10 IBLA 118 (1973). In both cases the BLM determined that the lands had primary values for open space and recreation, and appellants were offered lifetime leases instead of fee interests under the Mining Claims Occupancy Act. The Board held that the determination of the extent of relief that would be granted to a qualified applicant under the Mining Claims Occupancy Act was committed to the discretion of the Secretary of the Interior, and where the determination to award an applicant a lifetime lease instead of fee title rested upon a rational basis, it would not be disturbed. In the instant case, we find that the BLM has presented a rational basis for its decision in light of its determination that the public interest would be better served by preserving the land for public recreation and open space use rather than allowing permanent private acquisition. See 43 CFR 1725.3-3(f). Under these circumstances, issuance of a lifetime lease strikes an equitable balance between preserving the integrity of national resource land management programs and the remedial goals of the Mining Claims Occupancy Act. Accordingly, the BLM decision with respect to the Kirks is affirmed.

[2] We also affirm the BLM decision offering the Heveners a five-year renewable lease under the Small Tract Act. Initially we note that the Heveners' occupancy was not lawfully initiated and was a trespass on national resource lands which could have been terminated in the discretion of the Department. 43 U.S.C. § 1061 (1970); 43 CFR 9239.2-1. In light of the land management considerations and equities involved, the BLM chose to offer the Heveners a lease under the Small Tract Act. This Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands not exceeding five acres. We hold that it was neither an abuse of discretion, nor contrary to any relevant statute, regulation or (incidentally) BLM Manual instruction criteria, to offer the Heveners a five-year renewable leasehold interest under the Small Tract Act instead of fee title where the latter form of tenure would interfere with BLM resource development and management programs. See Richard O. Morgan, 10 IBLA 141 (1973). 3/ --

3/ Similarly, if we ignore the Kirks' reliance upon BLM Manual criteria and simply treat their appeal as a request for alternate relief pursuant to the Small Tract Act, we come to the same conclusion that an offer of a lifetime leasehold was a proper exercise of the Secretary's discretionary powers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

